

STATE OF MICHIGAN
COURT OF APPEALS

MONROE COMMUNITY MENTAL HEALTH
AUTHORITY,

UNPUBLISHED
June 12, 2003

Plaintiff/Counter-Defendant-
Appellant,

v

MICHIGAN AFSCME COUNCIL 25,

No. 239265
Ingham Circuit Court
LC No. 01-093370-CL

Defendant/Counter-Plaintiff-
Appellee.

Before: Sawyer, P.J., and Meter and Schuette, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition in favor of defendant and affirming an arbitration award. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Prior to January 1, 1997 mental health workers in Monroe County were employed by the county. The county and defendant, the union that represented county workers employed in the mental health field, entered into a collective bargaining agreement (CBA). The CBA, which covered the period 1992 through 1994, provided long-term disability benefits to employees. The maximum benefit period extended until age sixty-five for employees who became disabled before attaining age sixty. A subsequent CBA covering the period November 14, 1995 through December 31, 1998 provided that employees could collect long-term disability benefits for a maximum period of two years. The county and defendant informally agreed that the language providing for a two-year cap on long-term disability benefits would operate prospectively only and thus would not apply to four county employees, including Debra Barron and Josephine Shinevarre, who began receiving benefits under the 1992-1994 CBA. The informal agreement was not reduced to writing.

Plaintiff was established effective January 1, 1997 as the successor employer to the county for employees working in community mental health. Plaintiff is a separate legal entity. MCL 330.1204(1); MCL 330.1205. Plaintiff and defendant negotiated a new CBA. That CBA covered the period January 1, 1997 through December 31, 1998 and provided for a two-year cap on long-term disability benefits. The CBA provided that the agreement and any letters of

understanding not changed during the negotiation process constituted the entire agreement between the parties.

Effective January 1, 1999 plaintiff and defendant entered into a new CBA. Article XIX, § 6(c) provided for a two-year cap on long-term disability benefits. Article VII provided for a grievance procedure, the final step of which was arbitration. An arbitrator would have no power to modify or alter the agreement. Article XXIII provided that the agreement constituted the entire agreement between the parties, and that the parties had no other agreements, either oral or written, express or implied, covering their relationship.

By letter dated January 6, 1999 plaintiff notified defendant that long-term disability benefits paid to Barron and Shinevarre would be terminated in thirty days. Defendant filed a grievance alleging that plaintiff's termination of long-term disability benefits violated the CBA, and in an accompanying letter stated that while the grievance was filed in Barron's only, Shinevarre should be included as well.

Plaintiff denied the grievance, and the matter proceeded to arbitration. The arbitrator ruled in favor of defendant and found that plaintiff violated the CBA when it terminated Barron's and Shinevarre's long-term disability benefits. The arbitrator concluded that Shinevarre was a proper party to the grievance, noting that plaintiff placed Barron and Shinevarre under one umbrella when it notified defendant that the employees' long-term disability benefits were being terminated, and observing that the substantive issue in the case, whether plaintiff violated the CBA by terminating long-term disability benefits, was not affected by the inclusion of Shinevarre in the grievance. The arbitrator concluded that plaintiff violated the CBA by terminating Barron's and Shinevarre's long-term disability benefits. The arbitrator found that the 1999 CBA at issue was silent as to whether the two-year cap on long-term disability benefits operated prospectively only, and thus was ambiguous.

The arbitrator found that when plaintiff and defendant met to negotiate a new CBA, the provisions of the previous CBA were adopted, and plaintiff did not seek to alter the informal agreement regarding the prospective applicability of the two-year cap. The arbitrator concluded that this past practice took precedence over the specific disability provision of the 1999 CBA, and required plaintiff to continue paying long-term disability benefits to Barron and Shinevarre.

Plaintiff filed a petition in circuit court to vacate the arbitration award, and moved for summary disposition pursuant to MCR 2.116(C)(10). Defendant filed a counter complaint seeking to enforce the award, and contended that it was entitled to summary disposition pursuant to MCR 2.116(I)(2). The circuit court affirmed the arbitration award and granted summary disposition in favor of defendant. The circuit court found that the issue of the inclusion of Shinevarre in the grievance was procedural in nature, and that the arbitrator's resolution of the issue was not subject to judicial review. The circuit court concluded that the arbitrator properly required plaintiff to continue paying long-term disability benefits to Barron and Shinevarre pursuant to the past practice of applying the two-year cap prospectively only.

We review a trial court's decision on a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). However, when considering the enforcement of an arbitration award, our review is circumscribed. Labor arbitration is a product of contract. *Lenawee County Sheriff v Police Officers Labor Council*,

239 Mich App 111, 118; 607 NW2d 742 (1999). An arbitrator's authority to resolve a dispute arising out of the interpretation of a CBA is derived exclusively from the contract. *Id.* Judicial review of an arbitrator's decision is limited. *Id.* A court cannot review factual findings or the merits of the decision. *Id.* If the arbitrator did not disregard the scope of his authority as expressed in the contract, judicial review ceases. *Id.*

Plaintiff argues that the circuit court erred by affirming the arbitration award. We agree and reverse the circuit court's decision. The substantive issue, whether the terms of the 1999 CBA required plaintiff to pay long-term disability benefits to an employee who began receiving such benefits prior to the effective date of the 1995-1998 CBA, was properly submitted to arbitration. The arbitrator correctly noted that the resolution of that issue did not depend on whether the grievance was brought in the name of one employee or multiple employees. The arbitrator did not exceed his authority or improperly modify the CBA by resolving this issue. The trial court correctly found that the arbitrator's decision that Shinevarre was included in the grievance concerned a procedural matter and was not subject to judicial review. *Roseville Comm School Dist v Roseville Federation of Teachers*, 137 Mich App 118, 124-126; 357 NW2d 829 (1984).

Nevertheless, the circuit court erred by affirming the arbitration award. The CBA provided that long-term disability benefits were payable for a maximum of two years. The CBA also provided that it constituted the entire agreement between the parties, and that no other agreements, written or oral, express or implied, applied to the parties' relationship. A past practice that does not derive from a CBA may become a term of employment that is binding on the parties. *Amalgamated Transit Union v Southeastern Michigan Transportation Authority*, 437 Mich 441, 454; 473 NW2d 249 (1991). A past practice that contravenes clear contractual language may supersede that language; however, the contractual language controls "unless the past practice is so widely acknowledged and mutually accepted that it amends the contract." *Port Huron Ed Ass'n v Port Huron Area School Dist*, 452 Mich 309, 312; 550 NW2d 228 (1996).

Defendant and the county reached an informal agreement that the two-year cap on long term disability benefits, which first appeared in the 1995-1998 CBA, would be applied prospectively only. Plaintiff did not exist when defendant and the county reached this agreement and was not a party to the agreement. The arbitrator found that plaintiff adopted this agreement when it negotiated a new CBA with defendant; however, no evidence demonstrated that plaintiff intended to adopt the agreement or even knew of its existence. The evidence showed that plaintiff paid Barron and Shinevarre long-term disability benefits for two years, as required by the 1997 CBA to which plaintiff first became a party, and then terminated those benefits in early 1999. No evidence showed that plaintiff was aware of and intended to carry forward the past practice that defendant contended required that benefits continue to be paid. The arbitrator exceeded his authority by concluding that a past practice superseded the clear language of the CBA when no evidence showed that plaintiff was aware of and adopted the past practice. *Id.* The arbitrator's decision did not draw its essence from the CBA and was an improper modification of the CBA. The circuit court erred by affirming the award. *Lenawee County Sheriff, supra*.

Reversed

/s/ David H. Sawyer
/s/ Patrick M. Meter
/s/ Bill Schuette.